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No. 906

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

CHARLES L. ENGELSHER, M. D., as Director, Owner and Licensee of a private proprietary hospital known as "PARKCHESTER GENERAL HOSPITAL,"

Petitioner

-AGAINST-

MORRIS A. JACOBS, M. D., as Commissioner of Hospitals of the City of New York and as Chairman of the Board of Hospitals of the City of New York,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Supreme Court of the United States:

Charles L. Engelsher, the Petitioner herein, prays that a writ of certiorari issue to review the Final Order of the Court of Appeals of the State of New York entered on the 13th day of March, 1959.

Opinion Below

The opinion of the Court of Appeals of the State of New York is reported in 5 N. Y. 2d 370. A copy of this opinion is hereto annexed and marked Exhibit "A" hereof.

Jurisdiction

The Final order of affirmance of the Court of Appeals of the State of New York which is sought to be reviewed herein, was made and entered on the 13th day of March, 1959.

No motion for an order requesting a rehearing was made to the Court of Appeals of the State of New York nor was any application made for an order extending the time within which to petition for a writ of certiorari.

The jurisdiction of this Court is invoked under Rule 19 of the Supreme Court Rules and Title 28 U. S. C. and Sections 2101 (c) and 2104, on the ground that review by the Supreme Court by writ of certiorari is sought of an order of affirmance on appeal by the Court of Appeals of the State of New York. Certiorari is sought on the grounds, that the Court of Appeals of the State of New York has rendered a decision of an important federal question of substance not heretofore determined by this Court, and/or has decided it in a way probably not in accord with the applicable decisions of this Court.

Questions Presented for Review

1. Whether or not Section 56, Subd. 4(b) of the Hospital Code and Regulations promulgated by the New York City Board of Hospitals, effective as of October 1, 1956, which among other things requires the enlargement of the floor area required to be occupied by each bed in other than single rooms in private proprietary hospitals built and in operation prior to October 1, 1956, as compared with previous requirements established by the Regulations governing the maintainance of such hospitals and in effect for 25 years prior to October 1, 1956, and which in effect compels petitioner to remove 30 beds from his

hospital constructed in accordance with the requirements of the Regulations in effect prior to October 1, 1956, deprives petitioner of his property without due process of law in violation of his constitutional rights under the Fourteenth Amendment:

2. Whether or not the aforementioned Section 56, Subd. 4(b) of the Hospital Code and Regulations which applies solely to private proprietary hospitals catering to only 20% of the paying patients in the City of New York hospital field and does not apply to voluntary or city hospitals in the City of New York, which cater to 80% of such paying patients, is unreasonably discriminatory against private proprietary hospitals and thus denies petitioner, who is the owner and operator of a private proprietary hospital, equal protection of the law guaranteed to him under the Fourteenth Amendment of the Federal Constitution:

3. Whether or not the aforementioned Section 56, Subd. 4(b) of the Hospital Code and Regulations is an ex post *facto* law, in that it denies to petitioner who is the owner of a private proprietary hospital constructed in accordance with the previous requirements of the Regulations governing the maintainance of private proprietary hospitals, his right to property and to follow his vocation in violation of Section 10 of Article 1 of the Federal Constitution.

Provisions of the Constitution of the United States in Point

"AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. • • • ,,

"ARTICLE I—THE CONGRESS

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. • • • ,,

STATUTORY PROVISIONS IN POINT

Applicable Provisions of the New York City Charter

"§583. Powers and duties of commissioner.—The commissioner shall have all the powers and duties of the department except those vested by law in the board of hospitals. (As added by L.L. 1950, No. 98, July 27. Former §583 renumbered to be §583-a.)

"§583-a. Jurisdiction of department.—a. The department shall:

1. Maintain and operate all hospitals, sanatoria, alms houses or other institutions of the city for the care of sick, injured, aged or infirm persons, except as otherwise provided by law, and shall have

charge and control of the ambulance service provided by the city, and, except as otherwise provided by law, over any psychopathic service for the examination, observation and treatment of persons and over any other service maintained by the city for the care of sick, injured, aged or infirm persons as may be assigned to the department or the commissioner by law.

2. Visit, inspect and license in the discretion of the commissioner all private proprietary hospitals, sanatoria, nursing homes, convalescent homes, homes for the aged or for chronic patients, or other private proprietary institutions wherein human beings are nursing care and or custodial supervision, unless such institutions are incorporated by special act of the legislature or are under the state department of social welfare or are duly licensed under the provisions of the mental hygiene law or of section four hundred eighty-two of the penal law. A license issued under this subdivision shall expire one year from the date of the issuance thereof, unless, in the discretion of the issuance thereof, unless, in the discretion of the commissioner, it shall be sooner revoked, and may be renewed. The board of hospitals, notwithstanding any other provision of law, is hereby authorized to promulgate and include in the hospital code necessary rules and regulations to carry out the purposes of this subdivision to protect the public health and welfare, which shall, before the same become effective, be filed with the city clerk and published in The City Record for three days and shall thereafter have the force and effect of law. The establishment and or maintenance of any such institution without a license therefor as in this subdivision provided